

**Legal tools for
citizen empowerment:
Increasing local participation
and benefit
in Mali's mining sector**



**Amadou Keita, Moussa Djiré, Kadari Traoré,
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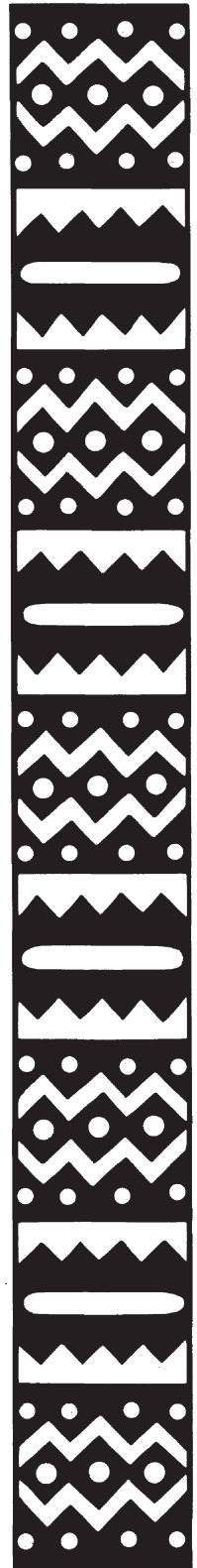


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INCREASING LOCAL PARTICIPATION AND BENEFIT IN MALI'S MINING SECTOR

Amadou Keita, Moussa Djiré, Kadari Traoré, Kader Traoré, Djibonding Dembelé, Arouna Dembelé, Mamadou Samassekou and Moussa Doumbo.
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Bottom: The mining company in Kalana. © Moussa Djiré

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ABOUT THE AUTHORS

The authors of this report are members of the Groupe d'Etude et de Recherche en Sociologie et Droit Appliqué (GERSDA), a body established by staff from two faculties of the University of Bamako: the Faculty of Legal and Political Sciences and the Faculty of Economics and Management. Their work focuses on key challenges like governance, land tenure, decentralisation, and the legal empowerment of citizens, particularly in rural areas.

ACRONYMS

CMDT	Compagnie Malienne pour le Développement du Textile
DNSI	Direction Nationale de la Statistique et de l'Informatique
EITI	Extractive Industries Transparency Initiative
FIDH	Fédération Internationale des Droits de l'Homme
GERSDA	Groupe d'Etude et de Recherche en Sociologie et Droit Appliqué
IIED	International Institute for Environment and Development
MSDP	Mining Sector Development Programme
NGO	Non-Governmental Organisation
PLC	Public Limited Company
SFGPR	Strategic Framework for Growth and Poverty Reduction
SFPR	Strategic Framework for Poverty Reduction
SOMIKA SA	Société de la Mine de Kalana
WAEMU	West African Economic and Monetary Union

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I. INTRODUCTION



In Mali, land and natural resources are central to economies and societies. The livelihoods of most rural people are based on these resources. In recent years, outside players have also become increasingly interested in Mali's natural resources – particularly valuable subsoil resources like minerals.

Mali's mining sector has grown greatly since the early 1990s, with a surge in gold mining activities by domestic and foreign investors attracted by the country's rich deposits. Mining on an industrial scale is now a major activity and the second largest source of export income after cotton.

But while the state receives revenues from mining operations, some observers have criticised the negligible benefits received by local communities and the evictions and environmental pollution caused by mining activities. Macroeconomic figures about the contribution of mining to GDP or foreign exchange do not say much about the impacts (positive and negative) that mining is having at the local level – for instance, in terms of security of local land rights, and local participation in investment decisions and benefits.

These issues are of particular interest to the *Groupe d'Etude et de Recherche en Sociologie et Droit Appliqué* (GERSDA), which works to build the capacity of Malian citizens to make use of the law. In partnership with the International Institute for Environment and Development (IIED) and as part of a programme of action-research implemented in four African countries (*Legal tools for citizen empowerment*), GERSDA undertook a scoping study in two of Mali's major mining areas, Morila and Kalana. The objective was to identify the difficulties local communities experience in their dealings with external actors, especially investors, and to identify the legal tools that may enable them better to defend their interests.

Drawing on a socio-legal approach, the methodology involved analysis of legal texts and short field visits to two sites, with a workshop to present and discuss preliminary findings. Thus, eight researchers from GERSDA visited Morila and Kalana in April 2007, to talk to local communities and the political and administrative authorities about mining-related expropriations and the impact of mining investments on the environment and local development. Two members of the research team visited the two localities again in May 2007, when they were able to meet officials from the mining companies concerned.

The draft report compiled following these missions was presented at a workshop in Bamako in November 2007, which was attended by representatives from communities in the two mining areas, political and administrative officials and representatives from NGOs.¹ This publication is a synthesis of the information gathered in the field, through the legal analysis, and at the workshop in Bamako.

It should be noted that the objective of the short field visits was not to undertake in-depth research on the impacts of mining, but to discuss issues, challenges and opportunities with local stakeholders, and lay the foundations for GERSDA's work during the *Legal tools* programme. In other words, the study is not a comprehensive assessment of the social, economic and environmental impacts of the mining sector in Mali.

Rather, after a brief introduction to Mali's mining sector and the field sites (section II), the study identifies legal tools that can be used by local people better to secure their land rights and participate more effectively in investment decisions and benefits, assessing the strengths and weaknesses of these tools (section III). It also considers ways to increase their effectiveness, and identifies next steps for policy engagement and capacity building work (section IV).

1. Officials from the mining companies were invited, but did not attend the workshop.

**II. MINING IN MALI:
LEGISLATIVE FRAMEWORK,
ISSUES AND CHALLENGES**



2.1 NATIONAL CONTEXT

Mali is recognised as the third largest gold producer in Africa after South Africa and Ghana, with ongoing mining activities at various sites around the country (Morila, Sadiola, Kalana, Yatela and Loulou). Gold production features prominently in the country's second poverty reduction strategy – the Strategic Framework for Growth and Poverty Reduction (SFGPR) – which states that “the mining sector will continue to be a driving force in the economy. Between 1994 and 2005 the gold sector grew by 22 per cent, more than any other sector in Mali. It is now the country's major export product and the second greatest source of foreign exchange”.²

The legal framework for gold mining activities is set out in the Mining Code,³ in its implementing decree,⁴ and in the decree containing the model Convention of Establishment.⁵ The Mining Code covers the key aspects of mining operations, including exploration and extraction; relations of mining right holders with landowners and with the government administration; the economic, financial, fiscal and customs arrangements applicable to mining activities; and arrangements relating to the environment, cultural heritage, health and safety, labour, and other issues. Discussions are under way to bring the Code into line with the Mining Code adopted by the WAEMU in 2003.⁶

Another noteworthy development was the adoption of the Mining Sector Development Programme (MSDP) on 6th May 2006. Its objectives include improving the legal framework for mining activities and the performance of the administration responsible for mining, so as to attract more investment; furthering research to improve knowledge about geology and mining; and diversifying mining production. The MSDP also includes a component on support for local communities.

2. Republic of Mali (2006: 61), our translation.

3. Ordinance N° 99-032/P-RM of 19th August 1999. The earlier Mining Code of 1991 (Ordinance N° 91-065/P-CTSP) was in force when several ongoing mining projects were initiated, including in the study sites.

4. Decree N° 99-255/P-RM of 15th September 1999.

5. Decree N° 99-255/P-RM of 19th August 1999. As each Convention of Establishment is individually negotiated between the company and the government, they may differ from the model in certain respects.

6. Adopted by the Council of Ministers through WAEMU Regulation N° 18/2003/CM/WAEMU of 23rd December 2003.

In Mali, the debate about the mining sector, and gold mining in particular, raises a range of contentious issues, and has seen the press and NGOs wrangling with mining companies and the government over the figures involved.

Lack of public information about the conditions under which the extractive industries operate, and how the financial resources they generate are managed, has created deep disquiet among the population, some of whose concerns are reflected in the press.⁷ Problems in the cotton sector and hopes based on the rising price of gold recently brought the debate about the precious metal to the fore again – not least as an opportunity for certain candidates in the 2007 general elections to criticise the government.

In September 2007, the International Federation for Human Rights (FIDH) published a report that was fairly critical of the Malian government and mining companies (FIDH, 2007). Other publications in the same vein include one by Gilles Labarthe (2007), which, while covering Africa in general, also considers the situation in Mali, and various pieces by Oxfam America (2004, 2006) exposing the shortcomings of the mining sector in Mali.

These and other reports have expressed concerns about the way the government and mining companies negotiate Conventions of Establishment, about respect for environmental standards in mining sites, about mine workers' conditions, and about how mining revenues are distributed and used. Malian NGOs have also expressed their disquiet about the yawning gap between the mining companies' profits and the poverty and environmental problems in communities living near their mines.

The World Bank-inspired reform of mining codes in various African states has generally been very liberal,⁸ with the 1999 reform of Mali's Mining Code putting a 20 per cent cap on state holdings in mining companies.⁹ Given that the World Bank group's International Finance Corporation (IFC) funds several mining companies, the World Bank's intervention in the reform of mining legislation and IFC's participation in mining operations

7. Some of the more instructive newspaper headlines include (our translation): "Mines: mining companies' delight over gold", *Soir de Bamako*, 22nd September 2007; "Mining companies' audit blocked", *L'Indépendant*, 14th September 2007; "FIDH report on mining in Mali: Malian gold doesn't glitter for everyone", *Le Pouce*, 25th September 2007.

8. Mali's Mining Sector Development Programme was also formulated with support from the World Bank.

9. See Pascale Hatcher's study (2004) on the revision of the Mining Code in Mali.

raise questions about a possible conflict of interest. These concerns have been taken up by various national and international NGOs, but are refuted by the Malian government and the mining companies concerned.

The government has responded to criticism from various quarters by releasing more detailed information on the revenue generated by the mining sector. According to data from the Ministry for Mines, gold accounted for up to ten per cent of national GDP in 2006,¹⁰ with total production of 62,024 tonnes bringing in nearly 100 billion CFA francs (approx. 153 million euros).¹¹ The mines in Yatela, Morila and Sadiola contributed over 297 billion CFA francs (approx. 453 million euros) to the national budget between 1999 and 2005,¹² and a breakdown of the accounts shows that mining companies paid the Treasury at least 65 billion CFA francs (approx. 100 million euros) in indirect taxes each year.¹³ In terms of income distribution, “the state, salaried staff in the mining companies and service providers respectively receive 144.14 billion CFA francs (approx. 220 million euros), 34 billion CFA francs (approx. 52 million euros) and 20 billion CFA francs (approx. 30 million euros) each year”.¹⁴ These figures do not reveal what the mining companies earn, but judging by the fact that most of the 120 mining titles issued by the Malian authorities by end of 2005 related to gold, there is every indication that Mali is in the throes of a gold rush.

Donors are also pressing for greater transparency, linking progress in this arena with the implementation of good governance policies. The Malian government signed up to the Extractive Industries Transparency Initiative (EITI) on 2nd August 2006, and began putting in place the institutional framework for the EITI in 2007. Decree N° 7-180 PM-RM of 6th June 2007 created two structures:

- A management committee headed by the Prime Minister, which includes the ministers responsible for mines, finance, small and medium enterprises, local governments, the environment, industry, communication and territorial development, the President of the National Council of Civil Society and the President of the Chamber of Mines.

10. *Les Echos*, 3rd August 2006. It should be noted that these figures were released during a press conference held by an official from the national Department for Geology and Mining and a professor of Economics.

11. *Le Sphinx*, 28 September 2007.

12. *Ibid.* The exact figure was 297,336,143,097 CFA francs.

13. *Les Echos*, 3rd August 2006.

14. *Ibid.*, our translation.

- A 27-member steering committee headed by the Minister for Mines, with 11 representatives from ministerial departments, six representatives from mining companies, two members of Parliament, one national advisor and seven representatives from civil society.

The permanent secretary of the EITI in Mali was appointed by decree in 2007,¹⁵ with the commitment that “signing up to the EITI will help increase national and international confidence in the management of public affairs in our country. This kind of monitoring will allow us to update information on the revenues generated by the mining industries”.¹⁶ Nevertheless, signing up to the EITI is no guarantee of total transparency in the mining sector. While it seems entirely natural to declare what has been paid officially, government and mining companies are unlikely to open up the negotiation of the Conventions of Establishment – which are the cornerstones of the industry.

The mining companies’ own efforts to promote transparency are embodied in their (rather rare) press conferences, in their bulletins on mining activities, and in the information they publish on safety in the workplace and on community development activities. For example, an issue of Morila SA’s bulletin *Mine d’or de Morila* reports on malaria prevention activities in partner villages, and on the creation in 2002 of the Morila Association – a foundation with start-up funds of US\$ 500,000.¹⁷

Environmental pollution is another thorny issue. While all the studies undertaken by NGOs report that there is an ecological crisis in the various mining sites,¹⁸ the mining companies continue to claim that they are taking the measures needed to minimise problems with environmental contamination. In this respect, there is a need for additional independent studies and evaluations, as well as further investigations into the situation of communities living in and around mining areas. Their precarious living conditions and uncertain future after the closure of the mines are highlighted in the documents referenced above, and featured as a major concern during our exploratory research in the study sites.

15. Decree N° 7-266/PM6RM of 3rd August 2007.

16. Essor N° 16060 of 25th October 2007.

17. *Mine d’or de Morila*, July 2007.

18. Cf. the various reports and studies cited above.

2.2 THE STUDY SITES

GERSDA chose Morila and Kalana for this scoping study because they are two of the biggest mining areas in Mali. They are both located in the region of Sikasso, but belong to different districts and municipalities: Morila is a village in the municipality of Sanso, in the district of Bougouni, while Kalana is in the municipality of Gouaniaka, which is part of the district of Yanfolila. The two municipalities are briefly described below.

The municipality of Sanso

The municipality of Sanso has a total population of 11,278.¹⁹ The largest of its 16 villages is Sanso, which is one of the mine's four partner villages, along with Morila, Fingola and Dombala (the main village in the municipality of Dombala). Their partner status reflects the impact that mining is seen to have on these villages. The scoping study was conducted in the villages of Morila and Fingola.

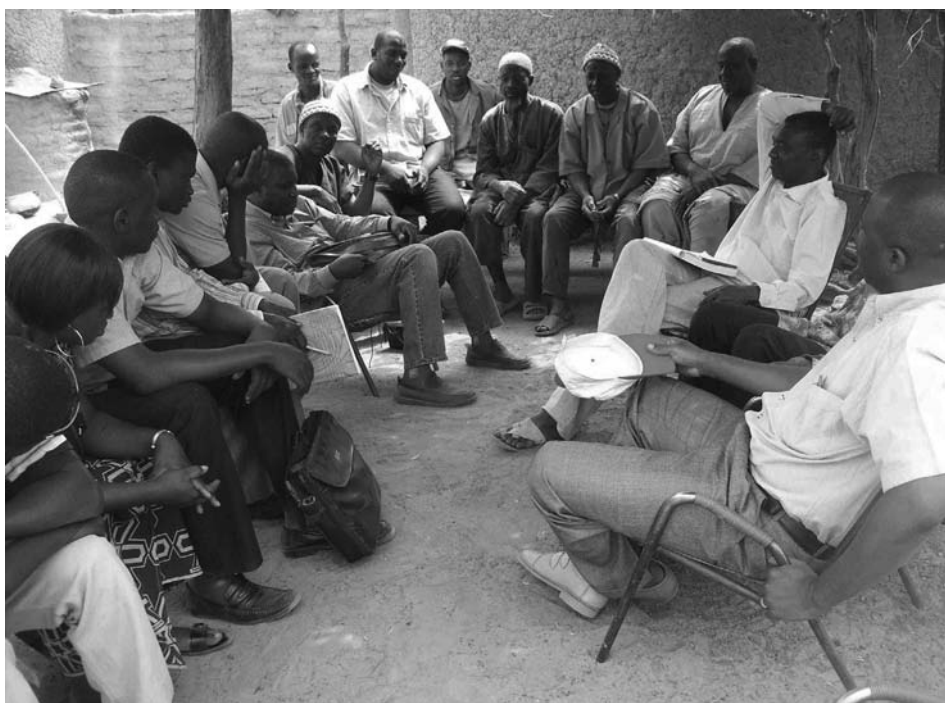


Photo: Moussa Djiré, 2008

Members of a "legal caravan" meet the village chief of Fingola (municipality of Sanso)

¹⁹. DNSI, 1998 census.

Mining activities in Morila have brought other ethnic groups into the predominantly Bambara population, introducing the indigenous Togola and Marika to other groups, particularly the Fulani, who are blacksmiths. The main economic activities here are agriculture and livestock rearing, although mining has drawn most of the younger generation away from the land. Company officials say that they give young men from the partner villages priority when recruiting unqualified staff, though the villagers we spoke to said that they find it very difficult to get a job.

The municipality of Gouaniaka

Situated in the district of Yanfolila, in the region of Sikasso, the municipality of Gouaniaka is made up of 29 villages with some 18,921 inhabitants.²⁰ The scoping study took place in the main village, Kalana. Economic activities here are based on agriculture, livestock rearing and fishing, but are dominated by mining. As one of the primary gold producing areas in the country, Kalana's population has changed considerably with the influx of workers from different ethnic groups.

²⁰. DNSI, 1998 census.

III. LEGAL TOOLS TO INCREASE PARTICIPATION IN INVESTMENT DECISIONS AND BENEFITS



This section assesses legal tools for maximising local participation and benefits in four key areas: the negotiation of mining contracts; safeguards in land takings; mechanisms for local participation in economic benefits; and tools concerning environmental protection.

3.1 TRANSPARENCY AND PARTICIPATION IN NEGOTIATING CONVENTIONS OF ESTABLISHMENT

As noted above, NGOs have been critical of the arrangements for negotiating Conventions of Establishment, particularly “the corruption in both the allocation of mining rights and the negotiation of mining conditions” (FIDH, 2007, our translation). Therefore, we discussed this issue with local communities, in relation to both the provisions of the Mining Code and actual practice on the ground.

Article 13 of the Mining Code states that “all mining titles, apart from exploration permits,²¹ are accompanied by a Convention of Establishment defining the rights and responsibilities of the State and the holder of the mining rights” (our translation). As noted, a 1999 decree approved the model Convention of Establishment for prospecting, researching and extracting mineral resources.

The Convention of Establishment (effectively, a contract) is signed on behalf of the government by the Minister for Mines. The aim of the Convention is to determine the general, economic, financial, fiscal and social conditions under which research, prospecting and extraction activities are carried out in the area covered.²² In other words, the Convention sets out the key terms and conditions for the mining project. On this basis, mining companies are issued with research or prospecting permits within thirty days from signing the Convention.²³

None of the legal arrangements for negotiating and signing Conventions of Establishment make any mention of scrutiny or participation by the people living in mining areas or by the public at large, while the Land Law and

21. The exploration permit is one of the five titles associated with mining activities, along with prospecting, research and extraction permits, and authorisation for small-scale mining activities.

22. Article 2 of the model Convention of Establishment.

23. Article 4 of the model Convention of Establishment.

legislation on local government lands make no provision for communities to claim any rights to subsoil resources.

In practice, the negotiation of Conventions of Establishment takes place without any transparency or public scrutiny. Such is the lack of transparency that even elected MPs are kept in the dark about “the mining issue”. The only aspect of the conventions that is publicised concerns the identity of consortium members and shareholders.

It is very difficult to get access to information in Mali, and especially hard to access government documents. Law N° 98-012 of 19th January 1998 recognises the principle of freedom of access to information while establishing exceptions to protect confidentiality. This can provide useful entries for greater transparency. However, there is a considerable gap between theory and practice. To the best of our knowledge, this legislation has not (yet) been successfully used by the public to scrutinise the negotiation of mining contracts.

Overall, legal avenues for local communities or the public at large to scrutinise and participate in contract negotiation are very limited. We were told that villages are routinely “canvassed” before exploration to convince residents of the importance of future mining activities. People who had left the village to live in Bamako were called in to Morila to help win over local public opinion by presenting mining as a source of well-paid employment and a catalyst for local development. Knowing the importance of custom and traditional institutions in rural areas, the authorities and mining companies may easily secure local support with promises to provide well-paid employment and local development. Communities are left with high expectations for the future but no real understanding of the stakes involved – including with regard to use of and rights to their land.

3.2 LAND TAKINGS AND COMPENSATION

Setting up a mine usually entails taking land from people in the area, and the Mining Code contains various provisions on this. However, rules on land takings can only be properly understood when related to the provisions of the Land Code.

Article 59 of the Mining Code 1999 states that “With regard to activities involving or affecting the land surface, no research or extraction rights arising from mining titles can be used without the consent of the landowner(s) and their successors in title”.²⁴ This seems to suggest that landowners can refuse to hand over their land for mining purposes. But article 60 negates this apparent privilege, affirming that “if the landholder or his successors in title withhold consent, they may be obliged to allow works to be carried out unhindered on their property, in accordance with current regulations and in return for prior and adequate compensation”.²⁵ These provisions of the Mining Code reflect the government’s prioritisation of mining activities, which are one of its main sources of income, over other forms of resource use.

These provisions do not specify whether they refer to land ownership rights arising from registered land titles alone, or whether they also include customary land rights. In the absence of provisions to the contrary, we assume that they apply to both types of rights, especially as paragraph two of article 60 explicitly refers to customary rights holders when clarifying that any compensation for loss of rights and for damage suffered must be paid by mining companies. This interpretation is in line with the Land Code, article 43 of which “confirms” customary land rights and requires compensation for their taking.

Due to a range of procedural and financial obstacles, very few people in Mali hold registered land titles, especially in rural areas. The vast majority of farmers are excluded from land ownership rights (Djiré, 2007). Therefore, the extent to which customary land rights are legally protected is very important.

More detailed arrangements for the taking of customary land rights are provided by the Land Code. Article 47 of this Code states that “the procedure for expropriation in the public interest is applicable to the purging of customary rights”.²⁶ In recognition of the particular nature of

24, 25, 26. Our translation.

customary rights, article 47 sets one condition for the expropriation procedure – it requires “a public inquiry in which all parties are represented, in order to document the existence of any customary rights pertaining to these lands, their content as well as the identity of the persons holding them”.²⁷

However, although the law is clear about who is responsible for holding these inquiries, the necessary decree to set out their procedure has yet to be adopted. Paragraph 3 of article 47 continues: “When the inquiry confirms the existence of customary rights, these will be expunged by compensating the holders according to the procedure for expropriation in the public interest prescribed by the current law”.²⁸

To understand the mechanisms of this procedure we need to refer to other provisions of the Land Code. Article 225 indicates that expropriation is carried out through a court ruling. Once public interest has been declared, a notice is issued by the Ministry for lands and published in the official gazette or an authorised newspaper, and the landowners, occupants and users concerned are informed.

Two months after notification, the interested parties and expropriating authority appear together before a commission to try to reach an amicable settlement. The commission is composed of three government officials appointed by the Minister for lands or his representative.²⁹ If the parties cannot agree on the value of the land, the matter is sent to the competent court, which article 39 of the Land Code identifies as the only body able to decide on expropriation and a set figure for compensation.

To sum up, the Code does make arrangements that theoretically protect holders of land rights, including customary rights. The fact that local people have a legal right to obtain compensation for loss of their land, coupled with the requirement for a public enquiry before land takings, provide useful legal tools to protect the rights of local groups affected by mining projects.³⁰

27, 28. Our translation.

29. Article 235 of the Land Law.

30. The earlier 1991 Mining Code required compensation for improvements (article 84), and provided for dispute settlement by conciliation or, in default, by courts (article 85).

However, the extent of this opening is limited by both conceptual shortcomings and by implementation problems. As for the former, the notion of “public interest” legitimating the taking deserves a closer look. In principle, mining is undertaken by private profit-making companies, although the state may have a stake in their activities. Any land expropriated for mining is handed over to these companies. The question is: is a land taking in the public interest if it is carried out to allow private companies to set up profit-driven operations? If so, is it because mining is seen as an important factor in economic development?

The Mining Code currently in force does not state that all mining projects are in the public interest.³¹ But the relevant Convention of Establishment may explicitly state this for the specific mining project it relates to. For example, the draft Convention of Establishment between the Malian government and BHP-UTAH International Exploitation Inc.,³² which allowed the mine in Morila to be opened, makes no mention of the project being in the public interest as such but it does commit the government to use every possible measure and all appropriate means to facilitate the research and extraction activities undertaken by BHP-UTAH or future public limited company. Article 31, which is devoted to “administrative, mining and land guarantees”, is more explicit: “the Government will ensure that BHP-UTAH and the Plc can occupy and use all the lands required for Research and Extractive works on the deposit(s) pertaining to this Research and/or Extraction permit within the framework of the present Convention, [...] under the Conditions prescribed by the Mining Code”.³³

More important than conceptual shortcomings is the gap between the statute books and what happens on the ground. It is well known that there is an informal land market in Mali, and that prices vary according to factors such as the land’s location (peri-urban or remote rural areas, proximity to a major road or river) and the type of crops it can support (e.g. rice or other crops). Thus, the price for the transfer of one hectare of land can range from 50,000 CFA francs (76 euros) to 500,000 CFA francs (765 euros) or more. Given that land’s market value depends on what it is used for, one would expect land in mining areas to have a certain value.

31. Article 87 of the 1991 Code explicitly qualified mining operations as constituting public purpose.

32. It was not possible to obtain the final, signed agreement.

33. Our translation.



A mining waste dump at the Morila gold mine (municipality of Sanso)

This does not seem to be the case, however, as most people know nothing about the arrangements of the Mining Code or the Land Code. Having been told that mining was going to be very important for their village, elders in Kalana willingly handed over land in return for promises of development activities that would benefit the whole community. As will be discussed below, these promises are not crystallised in legally binding agreements. In addition, some people displaced by the mine reportedly only received land, bricks and water to build new houses by way of compensation for the destruction of their homes.

Two examples reported by the villagers we spoke to illustrate how compensation procedures vary from site to site. In a case from the village of Fingola, in the Morila mining area, officials from the mining company reportedly enlisted members of the Sanso émigrés association in Bamako to help with the handover of land. These and other pressures, including the promised opportunities that mining would bring to the village, made two farmers we spoke to accept compensation offers they had first rejected as below market rates.

In a second example from the village of Korédian, not far from Kalana, the original compensation offer of 19 million CFA francs (29,000 euros) was increased to 78 million CFA francs (119,084 euros) as a result of local resistance and support from the prefect of Yanfolila district and senior officials in Bamako. The prefect suggested setting up a commission to define compensation in line with the legal provisions of the Mining Code, the Land Code, the Forest Code and other legislation. The commission was composed of representatives from the mining company, the village, a member of the local land commission and representatives from the government technical services, and was headed by the sub-prefect.

These two examples suggest that variation in compensation across mining projects and sites significantly depends on negotiating power, the level of local resistance and support from government authorities. In both cases, staff from the mining companies argue that they simply applied the legislation then in force, which (much like the current Mining Code) as discussed prioritises mining interests over local land rights.

3.3 SHARING THE BENEFITS OF MINING PROJECTS: THE ISSUE OF DEVELOPMENT ACTIVITIES

In addition to compensation, the texts also set out mechanisms that allow local people to share in the benefits generated by mining projects. There are two channels for this: through business taxes paid to local governments, and development activities supported by mining companies.

Business taxes

The Mining Code requires mining companies to pay various dues and taxes, and with the advent of decentralisation local governments now receive some of this revenue through business taxes on industrial and commercial activities within their territory.

Law N° 00-044 of 17th July 2000 regarding the fiscal resources of municipalities, districts and regions stipulates that 60 per cent of the business tax paid by industrial enterprises – which include mines – goes to municipalities, 25 per cent to districts and 15 per cent to the regions; while 80 per cent of the tax on artisanal gold production and quarrying goes to

municipalities, 15 per cent to districts and 5 per cent to the regions. Apart from heavy plant used exclusively for mining operations, 60 per cent of the revenue from tax discs on vehicles goes to municipalities, 25 per cent to districts and 15 per cent to the regions. This is the only income that local governments receive from mining.

The table below shows how much local governments in the region of Sikasso received from Morila SA in the period 2004-2006.

Area	Distribution (%)	2004	2005	2006	Total
Municipality: Sanso	60 %	236,989,468	262,660,743	263,303,224	762,953,435
District: Bougouni	25 %	98,745,612	109,441,976	109,709,677	317,897,265
Region: Sikasso	15 %	59,247,367	65,665,186	65,825,806	190,738,359
Total	100 %	394,982,447	437,767,905	438,838,707	1,271,589,059

Source: Morila SA.

According to these figures, the municipality of Sanso received 762,953,435 CFA francs (approx 1.16 million euros) in business taxes between 2004 and 2006 – a considerable sum, especially when one considers the difficulties most municipalities have in collecting tax revenues. Lack of access to data does not enable us to assess what share of overall government take from mining projects in the municipality this is.

These revenues are paid into the public treasury for the benefit of the relevant communes. Assessing how they are used is difficult due to the principle of “budgetary unity”, whereby public revenues cannot be linked to specific expenditures but feed into the commune’s overall budget.

Development activities supported by mining companies

Although it is generally accepted that mining companies have a responsibility to put in place development programmes for the communities in their locality, it is questionable whether they have a legal obligation to do so. The FIDH report mentioned earlier cites article 125 of the Mining Code as “requiring mining companies to fulfil various local development obligations” (FIDH, 2007), but all this article actually requires holders of mining titles to do is:

- ensure that workers are housed on site in hygienic and sanitary conditions, in accordance with current legislation;
- respect the health legislation and regulations emanating from current texts;
- meet general conditions relating to the prevention of and compensation for work-related accidents and occupational ailments, and to professional associations and unions;
- when production starts, contribute to the installation or improvement of sanitary or educational infrastructures located within a reasonable distance from the deposit, in accordance with the normal needs of workers and their families, and organise leisure facilities for staff and their families.

The duties that mining companies are expected to fulfil are expressly formulated in relation to their workforce, meaning that there are no legal obligations toward the community at large. Even the requirement to contribute to the installation or improvement of infrastructures is for the health and education of company employees and their families. Nevertheless, mining companies have taken their lead from article 125 of the Mining Code in their approach to community development initiatives.

Practices vary from one area to the next, but generally do little to empower the communities concerned, which come to expect the mining company to provide them with everything, like a good father; and present the mining companies as magnanimous institutions willing to undertake development activities even though they are under no obligation to do so. Structures for community participation do exist, but the decision-making processes surrounding development activities tend to be driven by officials from the mining company rather than local people.

We found ample proof of this in Kalana and Morila, where most development activities are related to health or education. Health centres have been constructed and renovated, programmes set up to prevent illnesses like malaria and raise awareness about sexually transmitted diseases, and funding provided for the construction and renovation of classrooms and even some of the teachers' salaries. Activities in other arenas include financing the construction of bridges in the villages of Sanso

and Morila, mosques in Sanso and Domba, installing solar panels for the maternity clinic and mosque in Sanso, and developing irrigated fields for women in partner villages. SOMIKA SA claims that it provides free electricity for the town hall, the sub-prefect, the church, the main mosque, the midwife's house, the dispensary, the police station and the radio mast, in addition to funding the construction of a track into the village and sinking three boreholes with the help of villagers. While there is no doubt that this has all been to the benefit of these communities, it is also clear that they played little part in the decision-making processes or execution of these works – despite the existence of a participatory structure mandated to manage community development.

In Morila, for instance, a community development committee was set up by the Governor of the Sikasso region following a conflict between the mine and local people. Committee members included the four relevant village chiefs and their advisers. Due to problems in the functioning of this committee, the mining company set up a steering committee bringing together representatives from the mine, chiefs from the four partner villages, the sub-prefect, the mayor of Sanso and delegates from youth, women and hunters associations in order to identify and undertake development activities on the basis of local needs.

The villagers say that it is the mine that ultimately decides on priority actions, chooses service providers and sorts out their contracts,³⁴ while officials from the mining company argue that decisions are democratically made in accordance with the different concerns of the various villages.

Insofar as its organisational structure has a staff member responsible for community development, the mine presents community development as a priority component of its programme of actions, with an annual budget line of US\$ 150,000. It also gives partner villages 60 per cent of the revenue generated by selling used or 'salvaged' goods.

34. Until recently, contracts were dealt with by the mining company's community development officer.

3.4 TOOLS FOR ENVIRONMENTAL PROTECTION

Reading through the Mining Code, one gets the impression that environmental issues are a major concern for the Malian authorities as the environment is mentioned at each stage of the mining process:

- Article 116 of the Code obliges anyone holding a mining title or authorised to open and work a quarry to respect current legislative and regulatory arrangements regarding the environment.
- During the research phase, holders of research or prospecting permits are required to secure or reinstate the site once they have completed their activities, and to provide the authorities with a report on what has been done.
- Applications for mining permits must be accompanied by an environmental impact assessment, which should be updated during the mining phase.
- Holders of mining titles should pay a deposit into a recognised international bank to cover the cost of securing and reinstating the site in the post-mining phase, as per the environmental impact assessment.

Although the Mining Code also sets out monitoring procedures for the Ministry of Mines, this does not have the resources to implement proper checks. A report by Oxfam America (2004) revealed that the government allowed the Syama mine to self-inspect because it was unable to oversee checks on the mine itself. This leaves companies free to produce documentary evidence that they are meeting current environmental standards, while a widespread lack of information leaves local people reliant on supposition rather than hard facts.

This raises the key question of how local communities can protect their environment. None of the arrangements of the Mining Code expressly gives them the right to protect themselves against possible environmental damage, but nor is there anything to prevent them from using this code and general environmental legislation as tools to protect their interests.

This includes article 69 of the Mining Code, which states that “research or extractive works should, in accordance with the legislation in force, respect

constraints and obligations relating to employees' health and safety, public safety and sanitation, the conservation of soils, flora, fauna and transport routes, the solidity of public and private buildings, and the use, outflow and quality of all kinds of water. When the aforementioned interests are threatened by research or extractive works, the Director of Mines may require the title holder to undertake any measures needed to protect these interests within a prescribed timeframe, possibly through the services of the ministries responsible for the environment, health and employment".³⁵

This arrangement signals the state's commitment to fulfil its responsibility to protect its citizens, who may call upon it to do so. Indeed, article 15 of the Constitution states that "every person has the right to a clean environment. It is everyone's duty to protect and defend the environment and promote quality of life, including the state".³⁶

At the local level, article 14 of the Local Government Code lists environmental protection as one of the municipal councils' responsibilities, which means that communities should also be able to enlist the help of their elected officials to tackle environmental problems.

A key constraint affecting the implementation of these provisions is the fact that both national- and local-level bodies find it very difficult to prove levels of environmental pollution.

^{35, 36.} Our translation.

IV. CONCLUSION



The aim of this section is to set out the basis for the future work of GERSDA, so it is not so much a conclusion as a marker of the transition between two stages of the *Legal tools* programme. As a scoping study, this report was not intended to provide detailed information and analysis, but to identify areas for further work through both action-research and capacity building.

4.1 MAIN FINDINGS

The main findings of the legislative analysis and our missions to Kalana and Morila are summarised below.

Urgent need for capacity building at the grassroots level

Our meetings with local people revealed widespread lack of awareness about the issues and legislation relating to mining. Local people are deeply concerned about being exposed to serious environmental pollution, but have no real knowledge about their situation and possible remedies. In addition, there is a huge difference between the negotiating powers enjoyed by local communities and mining companies. Afforded considerable advantages by a liberal Mining Code and installed over the heads of local communities, these companies generate substantial profits and reach into almost every aspect of local life. There is no denying some of the benefits of their investment in community development, but these well-resourced corporations seem all-powerful in the areas where they operate – one even wonders whether they or government authorities are in charge in these areas.

As a result, local people find it extremely difficult to use the openings provided by Malian legislation to their full potential – for instance, with regard to legal requirements to pay proper compensation for loss of land and livelihoods. Greater local capacity and support in negotiations with mining companies may enable more effective use of the legal tools available under Malian legislation.

A fresh look at the legal texts

While the law does provide certain tools that local people can use to protect their interests, various legislative and procedural gaps actually undermine their position. Thus, delays in the adoption of the implementing decree relating to the procedure for the taking of customary rights make it difficult for farmers to use this tool to protect their land rights.

In addition, the lack of any legal requirement for mining companies to support local development (business tax payments aside) leaves the initiative in the hands of the mining companies. While realism prompts some of these companies to fund community development projects as a means to create local support for their activities, much depends on the company's goodwill and on the relations it establishes with local people. Introducing a legal obligation for mining companies to sign binding agreements with local communities as a basis for development projects – in line with what happens in some other jurisdictions – would tighten up the regulatory framework and strengthen the negotiating position of local people.

As the terms and conditions of mining operations are shaped by Conventions of Establishment concluded between the government and mining companies, the lack of effective legal tools to scrutinise the negotiation of these conventions is a major shortcoming of the existing legal framework. Greater transparency and public scrutiny over existing conventions and over the negotiation of future ones are indispensable for maximising the contribution of these conventions to local sustainable development.

Insufficient data and information

With very little available data on the context and impacts of mining activities, there is an urgent need to conduct more research to support informed debate on the costs and benefits of this sector, including its economic, social, environmental and other impacts.

Photo: Moussa Djiré, 2008



A "legal caravan" in Morila (municipality of Sanso)

Photo: Moussa Djiré, 2008



A "legal caravan" in Kalana (municipality of Gouaniaka)

4.2 NEXT STEPS

In order to respond to the challenges raised by this scoping research, GERSDA will work on two strands of activities, in line with the overall approach of the Legal Tools programme: legal capacity building at the local level, and feeding into policy reform at the national level.

Building local capacity

In order to strengthen local capacity to make use of existing legal entries, we will:

- Organise “legal caravans” – developing a replicable method to provide legal literacy training and legal clinics for people living in mining areas, through camps led by legal academics, practising lawyers and judges as well as law students, in partnership with the local municipalities.
- Support community-based paralegals – community members trained in key aspects of the law, who are able to help other community members with simple legal issues or with identifying where to go for more specialised help.
- Support access to justice, including through accompanying referrals to the Ombudsman.

National-level dialogue

A revision of the Mining Code is underway, and may provide the opportunity to tighten up legal requirements in strategic areas like:

- Introducing more explicit legal obligations for mining companies on community development projects, while also regulating the management of these resources at the village level; and
- Improving access to information and public participation in the negotiation of the Conventions of Establishment, and structuring these conventions so as to maximise their contribution to local sustainable development.

In addition, there is a need to fill legislative gaps in other strategic areas, such as the missing implementing decree to the Land Code on the taking of customary land rights.

To feed into these debates, GERSDA will support dialogue between different stakeholders, and advocate for policy reform at the national level.

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Legal tools for citizen empowerment:

Increasing local participation and benefit in Mali's mining sector

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Mali's mining sector has grown greatly since the early 1990s, and is now the second largest source of export income. But while the state receives significant revenues, at the local level mining operations have been associated with loss of land rights and environmental pollution. This study identifies legal tools that can be used by local people to better secure their land rights and to participate more effectively in investment decisions and benefits. It assesses the strengths and weaknesses of these tools, and the opportunities and constraints associated with them. It also considers ways to increase their effectiveness, and identifies next steps for policy engagement and capacity building work.

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